

COMMUNITY AFFAIRS

Division Of Codes And Standards Lead Hazard Evaluation and Abatement Proposed Readoption: N.J.A.C. 5:17

Authorized By: Susan Bass Levin, Commissioner, Department of Community
Affairs.

Authority: N.J.S.A. 52:27D-124 and 436.

Proposal Number: PRN 2005-

Calendar: Reference: See Summary below for explanation of exception to calendar
requirement..

Submit written comments by April 22, 2005 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
PO Box 802
Trenton, NJ 08625
Fax No. (609) 633-6729
E-mail: mticktin@dca.state.nj.us

SUSAN BASS LEVIN, Commissioner

The agency proposal follows.

Summary

Pursuant to N.J.S.A. 52:14B-5.1, the Lead Hazard Evaluation and Abatement
Code, N.J.A.C. 5:17, is scheduled to expire on January 5, 2006. The Department has

reviewed these rules and finds that they continue to be necessary for the purpose for which they were promulgated and is therefore proposing that they be readopted.

The Lead Hazard Evaluation and Abatement Code is intended to protect public health, safety and welfare through the identification and abatement of lead-based paint hazards. The rules control the abatement of such hazards and the certification of lead-based paint evaluation or abatement contractors.

The rules consist of 11 subchapters, which are as follows: general provisions; contractor certification; evaluation and testing; pre-abatement preparation and occupant protection; lead hazard abatement--general; paint removal; component replacement; enclosure; encapsulation; soil; abatement cleaning (interior and exterior); final inspection and clearance testing; waste disposal; and steel structures or other superstructures.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

These rules are necessary in order to protect building owners and occupants from unqualified lead evaluation and abatement contractors and from unsafe work practices that might cause harm to them and their families or employees.

Economic Impact

A fee of \$1,800.00 is imposed by these rules for initial certification and renewal of certification. In either case, the certification is valid for two years.

The use of certified contractors and the following of prescribed work practices may well add to the cost of work. However, hazards to health and safety that are likely to result from work done by an unqualified person in an unsafe manner must also be taken into account in determining overall economic impact. Furthermore, inasmuch as these rules are consistent with applicable USEPA rules on contractor certification and HUD guidelines concerning lead evaluation and abatement work practices, they do not impose any economic burden not already imposed by these Federal rules and guidelines.

Federal Standards Statement

These rules do not include any requirements that exceed those established under Federal law. The following Federal rules and guidelines are referred to in the chapter:

"Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," published by HUD;

"Federal Requirements for Disclosure of Known Lead-Based Paint Hazards in Housing," jointly adopted by HUD and USEPA at 24 CFR 38 and 40 CFR 745, respectively, and "Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities," which was adopted by USEPA as part of 40 CFR 745 but was not jointly adopted by HUD. These rules are also referred to as rules adopted by USEPA under authority of Title X of the Housing and Community Development Act of 1992; and

"Lead Exposure in Construction Standards," adopted by OSHA at 29 CFR 2916.62. This chapter is not to be construed as conflicting with or limiting the applicability of these OSHA rules.

The Department has filed with USEPA a self-certification of these rules as conforming to USEPA requirements. This self-certification has been accepted without any objection and the rules are therefore deemed to be conforming. Work practice rules are consistent with, and do not exceed, the current HUD guidelines.

Jobs Impact

Since Federal laws prohibiting the performance of lead evaluation and abatement by uncertified contractors would be effective even if these rules were not readopted, these rules are not absolutely necessary in order to protect jobs of persons employed by certified contractors who might otherwise be undercut in price by unqualified contractors doing inferior work. However, involvement of the Department in lead hazard regulation does protect those jobs by strengthening enforcement.

Agricultural Industry Impact

These rules affect the agricultural industry insofar as they apply to evaluation and abatement of lead hazards in buildings used for agricultural purposes in the same way as they apply to buildings used for other purposes.

Regulatory Flexibility Statement

Most, if not all, of the in-State contractors offering lead evaluation and abatement services are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements and costs are discussed in the Summary and Economic Impact statements above. Since the rules are necessary to protect health and safety, no lesser or differing standards can be established for "small businesses." Furthermore, the rules are in conformity with applicable Federal law.

Smart Growth Impact

By facilitating the proper maintenance, and thus the preservation as safe housing of older buildings where lead-paint hazards may be present, these rules advance the goals of achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:17.